

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

AS.No. 639 of 1992()

OS.62/1975 of IST ADDITIONAL SUBORDINATE JUDGE'S COURT, THALASSERY
.....

APPELLANTS/DEFENDANT:

(*)CHIRAKANDOTH PALLIPRAVAN KUNHIRAMAN NAMBIAR,
S/O.KOTTARON RAMAN NAMBIAR, KODALI AMSOM,
KODOLIPROM DESOM, TELlichERY TALUK, CANNANORE DT.
(DIED. LRS IMPEADED.)

ADDL.A2. M.K.NANU NAMBIAR, S/O.CHIRIKANDOTH PALLIPRAVAN
KUNHIRAMAN NAMBIAR, PATTANNUR AMSOM,
KUNNOTH DESOM, TELlichERRY TALUK, CANNANORE DT.

ADDL.A3. M.K.PADMANABHAN NAMBIAR, S/O.-DO-, ANJARAKANDY AMSOM,
MAMBA DESOM, CANNANORE TALUK AND DISTRICT.

(ADDL.A2 AND A3 ARE IMPEADED AS THE LEGAL REPRESENTATIVES OF THE
DECEASED APPELLANT VIDE ORDER DATED 31.7.2007 ON CMP NO.2859/93)

ADDL.A4. C.P.PARVATHI AMMA, W/O.PAIDEL NAMBIAR, AGED 65 YEARS,
NO OCCUPATION, RESIDING AT PATTANNUR AM SOM,
KODOLIPRAM DESOM, THALASSERY TALUK.

ADDL.A5. C.P.DEVI, W/O.GOVINDAN NAMBIAR, AGED 45 YEARS, NO
OCCUPATION, RESIDING AT TALIPARAMBA KANNUR DT.

ADDL.A6. C.P.NARAYANAN NAMBIAR, S/O.PAIDEL NAMBIAR, AGRICULTURIST,
RESIDING AT PATTANNUR AMSOM, KODOLIPRAM DESOM,
THALASSERY TALUK.

(THE ABOVE ADDL.A4 TO A6 ARE IMPEADED AS THE LEGAL REPRESENTATIVES
OF THE DECEASED ORIGINAL APPELLANT VIDE ORDER DATED 31.7.2007 ON
CMP NO.3871/1997)

ADDL.A7. PADMAVATHI AMMA, W/O.PADMANABHAN NAMBIAR,
ANJARAKANDY AMSOM, MAMBA DESOM, KANNUR TALUK &
DISTRICT.

(ADDL.A7 IS IMPEADED AS ADDL.APPELLANT NO.7 VIDE ORDER DATED 31.7.2007
ON IA NO.280/2007)

BY ADV. SRI.V.R.VENKATAKRISHNAN (SR.)
SRI.T.A.RAMADASAN
SRI K.DIVAKARAN NAIR
SRI.N.C.JOSEPH

SRI.S.ANANTHAKRISHNAN
SRI.N.K.SUBRAMANIAN

RESPONDENT/PLAINTIFF:

KOZHUKUNNON PADMINI AMMA, D/O.NARAYANAN NAMBIAR,
KODALI AMSOM, KUNNOTH DESOM, TELLICHERRY TALUK,
CANNANORE DT.

BY ADV. SRI.GRASHIOUS KURIAKOSE

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD
ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K. PADMANABHAN NAIR ,J.

A.S.No.639 of 1992

Dated, this the 14th day of August, 2007
JUDGMENT

This appeal was originally filed by the sole defendant in O.S.No.62/1975 on the file of the Subordinate Judge's Court, Thalassery. During the pendency of this appeal he died. Three applications were filed for impleadment of legal heirs; one was by the children of the deceased appellant, another application by two nieces and a nephew and the third application by a grandson of the appellant. In view of the dispute this Court directed the trial court to conduct an enquiry regarding who is to be impleaded as legal representatives of the deceased appellant. Trial court by order dated 23.9.1996 found that the legatee under the Will dated 3.5.1993 is not entitled to be impleaded as legal representative. Records were returned to this Court with that finding. After receipt of the records the children of deceased appellant and the petitioners in C.M.P.No.3871/1997 entered into an understanding that the dispute between them need not be decided at this stage and both the applications may be allowed. So C.M.P.Nos.2859/1993 and 3871/1997 were allowed and the children, two nieces and a nephew of the deceased appellant were impleaded as additional appellants in this appeal.

2. This appeal arises from a suit for recovery of possession of the plaint B schedule property and for a decree of permanent prohibitory injunction restraining the predecessor of the appellants/defendants from trespassing into the

plaint A schedule property and in the alternative for recovery of possession of the same on the strength of title of the respondent/plaintiff.

3. Plaintiff is the daughter of defendant's brother. According to her the entire suit properties along with another five acres of property having an area of 20 acres originally belonged to her father, Narayanan Nambiar. It was averred that out of that 20 acres plaintiff's father executed a gift deed in respect of 5 acres of property in favour of her sister and the remaining 15 acres was gifted to the plaintiff. In the plaint A and B schedule properties were shown. A schedule consists of two items, i.e., item, No.1 seven acres of property, according to the plaintiff, was obtained by her father under registered marupat dated 12.6.1948 and item No.2 was acquired under oral kuzhikanam lease from Kalliat Thazhath Veettil Tharawad. Plaintiff claimed absolute title and possession over the entire 15 acres. Subsequently the suit was amended incorporating a prayer for recovery of A schedule property.

4. Defendant filed a written statement denying the title and possession claimed by the plaintiff. According to him plaint A and B schedule properties belonged to him as kuzhikanam tenant and out of this 3 acres of land was obtained by him from the jenmi family in the year 1120 ME on an yearly purappad of Rs.3/-. It was also contended that he substantially improved the property and constructed a kalapura in the property which he had subsequently demolished. It was contended that after demolition of the shed he constructed a house and was

residing in that house with family. It was contended that the house and surrounding land having an extent of 3 acres with a kila on all his possession. It was also contended that 4 acres of land lying on the southern side of 3 acres was in his possession with the permission of the landlord for grazing cattle. So he claims lease hold right in respect of 3 acres and absolute possession over remaining 4 acres of property in A schedule property.

5. Initially the suit was decreed in part. It was dismissed in respect of item No.1 in A schedule property but decreed in respect of item No.2 in A schedule property. Aggrieved by the judgment the plaintiff filed A.S.No.212/1981. One of the main contention raised before this Court was that identification of the properties made by the trial court was wrong. This Court considered the identity of the properties. This Court took note of the fact that the Commissioner himself had stated in his report, Ext.C4, that Ext.C3 plan was not drawn according to the field plan or according to the lie of the land or documents relied on by the parties and he prepared Ext.C3 plan solely based on the instructions given by one of the parties. This Court found that the trial court went wrong in deciding the question based on Ext.C3 plan. So this Court set aside the judgment and decree passed by the court below and remanded the case to the lower court for fresh disposal after giving a reasonable opportunity to the parties to adduce fresh evidence. The trial court was directed to locate the properties dealt with in the documents relied on by the parties and get a plan prepared after taking

out a fresh commission. Operative portion of the judgment passed by this Court in A.S.No.212/1981 reads as follows:

“I have no option, but to set aside the judgment and decree of the court below and remit back the matter to the lower court for fresh disposal, after giving opportunity to the parties to adduce fresh evidence. For locating the properties dealt with in the documents relied on by the parties and preparing a plan and report, it is necessary to take out a fresh commission. Plaintiff will take out a fresh commission for the purpose. As I am directing to issue a fresh commission, I feel that it would be only proper to set aside Exts.C1 to C4. I do so. The parties will be at liberty to adduce fresh evidence.”

This Court remanded the case with a specific direction to locate the properties dealt with in the documents relied on by the parties. Thereafter Ext.C5 report and Ext.C6 plan were prepared. Trial court accepted Exts.C5 and C6 and decreed the entire suit. Challenging that decree and judgment the defendant has filed this appeal.

6. The learned counsel appearing for the appellant submitted that in spite of a specific direction issued by this Court to identify the properties with reference to the title deed of parties, Commissioner prepared a plan according to his whims and fancies. Boundaries of item No.1 in A schedule property read as follows: -

East -

South -

West -

North -

Description of boundaries of item No.2 in A schedule property reads as follows:-

East -

South -

West -

North -

In Ext.C6 plan plots A, A1, A2 and A3 are located and identified as item No.2 in the property and plots B, B1 and B2 are located and identified as item No.1. Though the rest of the properties belonged to Kunhiraman and Narayanani the northern boundary of item No.1 is shown as the property belonging to the sister of the plaintiff. But Ext.C6 plan shows that the property on the north of the A

schedule property belongs to some other persons. Likewise the northern boundary of item No.1 is shown as oral lease property but as per Ext.C6 plan it is a property belonged to one Kunhambu Nambiar. Going by the description the southern boundary of item No.2 must be the property owned by one Govindan. But in Ext.C6 plan southern boundary of item No.2 is shown as dry land belonging to Abdul Jabbar which is a part of marupat property. It is also to be noted that going by the description the property gifted to plaintiff's sister is situated on the north and east of the A schedule property. But the identification of that properties in Ext.C6 plan shows that the Commissioner had shown some other property on the north of the suit properties. So the identification made by the Commissioner does not appear to be correct. In fact the trial court has also noted that fact. Trial court had found that description of item No.2 in plaint A schedule property is not exactly in conformity with the lie of the property. Trial court also noted that the plaintiff can succeed if she could prove that the entire 20 acres of land belonged to Narayanan Nambiar. But subsequently the Court below held that since the description of two items in A schedule property does not tally with the lie of the property, it is sufficient if the plaintiff is able to prove that the entire 15 acres in the A schedule belonged to Narayanan Nambiar. These two reasoning cannot stand together. So I have no other option, but to set aside the present judgment and decree and remand the case for fresh disposal.

7. In this case I may also note that during the pendency of the

appeal this Court made suggestions to the parties to settle the matter because the case is pending from 1975 onwards. Fight was between a niece and uncle. So I am of the view that the parties must make a sincere effort to settle the dispute amicably. So while remanding the matter there will be a direction to the learned Sub Judge to make every endeavour either in the court or through the Lok Adalath conducted by District Legal Services Authority to settle the dispute between the parties.

In the result, appeal is allowed. Judgment and decree passed in O.S.No.62/1975 are hereby set aside. Case is remanded to the court below for fresh disposal in accordance with law. Parties shall appear before the court below on 25.9.2007.

C.M.P.Nos.8931/1992 and 2085/1994 will stand dismissed.

K. PADMANABHAN NAIR
JUDGE

cks

AS No.639/1992

-: 8 :-

K.PADMANABHAN NAIR, J.

A.S.No.639 of 1992

JUDGMENT

14th August, 2007.